

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:22-cr-00333-O-4
Government,) FORT WORTH, TEXAS
VS.) MARCH 31, 2023
MARCEL MALLORY,)
Defendant.) 9:18 A.M.

VOLUME 1 of 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE REED C. O'CONNOR
UNITED STATES DISTRICT COURT JUDGE

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P R O C E E D I N G S

MARCH 31, 2023

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THE COURT: I call now Case No. 4:22-cr-333, the
United States vs. Marcel Mallory.

Counsel for the government is here.

Counsel for the defendant is here.

Sir, would you state your name for the record,
please?

THE DEFENDANT: Marcel Mallory.

THE COURT: Thank you, sir. We are here to
consider the sentencing in your case.

Counsel, did you receive a copy of the presentence
investigation report?

MR. TERRY: We did, your Honor.

THE COURT: And did you review that with your
client?

MR. TERRY: I did, your Honor.

THE COURT: Did the government receive these, this
document as well?

THE DEFENDANT: Your Honor, can I address the
Court, please, sir?

THE COURT: Hold on. Hold on one second.

Do you want to talk to him before he says
anything?

1 MR. TERRY: Yes. One moment, your Honor.

2 (An off-the-record discussion was had between the
3 defendant and his attorney.)

4 MR. TERRY: Your Honor, my client would like to
5 renew request for a motion that we filed regarding a
6 continuance of sentencing for two reasons. One reason I
7 stated in the sealed motion.

8 Second, it has come to his attention that there
9 may be other objections that were not filed in this case.
10 He's apparently met with an attorney, or maybe he's met with
11 someone who has some legal knowledge, has drafted several
12 motions just this last evening, I think he has several over
13 there he would like to pursue, by way of objections, I'm
14 assuming.

15 THE COURT: Okay. What objections would you like
16 to present?

17 THE DEFENDANT: Well, first of all, I wanted a
18 continuance just based on the fact that I just got my PSR on
19 Monday. You know, I only had it for four days. I didn't
20 have a chance to really review it. I mean, he just -- I
21 mean, and I also have an objection to the PSR.

22 MR. TERRY: He's got his physical copy. We have
23 reviewed the PSR at length for over two hours specifically
24 on the PSR. No objections were noted. No legal objections
25 coming from my side of it.

1 He has received some information in the past day
2 or two that now warrants, he believes, some actual
3 objections, because apparently FCI is not friendly with
4 having your PSR in your --

5 THE COURT: Right. Right. I mean, you really
6 aren't supposed to have your PSR, a physical copy of your
7 PSR. You are to meet with your lawyer. He's to show it to
8 you, and you can review it and spend two hours, or however
9 long you need with your lawyer, but you're not supposed to
10 be able to take your PSR and have your PSR on your own in
11 prison. Be that as it may -- be that as it may, go ahead
12 and tell me what objections you have.

13 THE DEFENDANT: Okay. On my PSR on page 6,
14 paragraph 11, it states that Heather Thompson, on four
15 different occasions, purchased 56-ounce quantities from me
16 for a total of 224 ounces or 6,353 grams of meth.

17 And after each transaction, she distributed 52
18 ounces to Brad Roberts. But that contradicts Heather
19 Thompson's own statement about these transactions in her
20 interview with the DEA on 9-14-22 where she stated that the
21 most meth she ever received from me was 52 ounces on only
22 one occasion.

23 And that Brad Roberts wanted the 52 ounces because
24 he had a client that he needed -- he needed the 52 ounces.
25 So that only happened one time, not four. Somehow the PSR

1 writer times'd it by four, when it was only actually one
2 instance that it occurred.

3 THE COURT: Okay. Okay. All right. So what
4 other objections?

5 THE DEFENDANT: I'm not sure about this. I'm a
6 little bit nervous. I'm sorry. I'm not a lawyer.

7 But on the controlled drug weight, okay, it's got
8 me at 220-something-thousand grams. When, from what I
9 understood, the ghost dope weight is supposed to be measured
10 in two kilograms for every gram, and then the actual is
11 supposed to be 20 kilograms for every gram.

12 THE COURT: Okay.

13 THE DEFENDANT: And they combined both of them
14 together and then charged me with 20 kilograms for all of
15 it, for the ghost dope, the 10-point-something kilos, they
16 charged me, so it came out to 220-some-thousand. It was
17 supposed to not be nearly that much.

18 THE COURT: So drug amounts?

19 THE DEFENDANT: Yeah.

20 THE COURT: All right.

21 THE DEFENDANT: The controlled drug weight.

22 THE COURT: And what other objections do you have?

23 THE DEFENDANT: That's it. I'm sorry.

24 THE COURT: Okay. So it appears as if the
25 government has brought a witness from the DEA to testify.

1 So, Mr. Smith, I will ask you, do you have an
2 agent here to testify to -- it sounds as if specifically, to
3 paragraph 11, drug transactions, and the accuracy of that
4 information contained in paragraph 11 on page 6.

5 MR. SMITH: Yes, your Honor. I don't think --
6 however, I don't think agent testimony is necessary. I can
7 clarify it. Ms. Thompson made multiple statements to the
8 DEA. The first one required --

9 THE COURT: Say that one more time. Multiple
10 statements what?

11 MR. SMITH: She had multiple proffer interviews
12 with the agent.

13 THE COURT: I see.

14 MR. SMITH: And so, the agent went back -- Agent
15 Finney went back several times and others to clarify some
16 things with Miss Thompson and others, not just
17 Miss Thompson.

18 In relation to this particular event, paragraph
19 11, and that particular interview that the defendant is
20 referencing, she said, yes, she did the one, 56-ounce
21 transaction.

22 THE COURT: Let me stop you there, because it does
23 appear to me sitting here, now Mr. Mallory has raised an
24 issue to the accuracy of that. So I think it would be
25 better to hear --

1 MR. SMITH: Okay.

2 THE COURT: -- testimony from the agent on the
3 information that exists so I can determine what I think to
4 be reliable or unreliable as it relates to those drug
5 transactions.

6 MR. SMITH: Yes, your Honor. The government would
7 call Agent Finney.

8 THE COURT: Sir, would you raise your hand to be
9 sworn, please.

10 (The oath was administered.)

11 AGENT FINNEY: Yes, I do.

12 THE COURTROOM DEPUTY: Thank you, sir.

13 DIRECT EXAMINATION

14 BY MR. SMITH:

15 Q. Will you please state your name?

16 A. My name is Brian Finney.

17 Q. And your current occupation?

18 A. I am a special agent with the Drug Enforcement
19 Administration, currently assigned to the Fort Worth, Texas,
20 office.

21 Q. You are one of the case agents in this case; is
22 that right?

23 A. Yes, I am.

24 Q. And you've been in the courtroom to hear some of
25 the discussion?

1 A. Yes.

2 Q. All right. And specifically, as it relates to
3 Miss Thompson and the information she provided about
4 Mr. Mallory, can you explain that for us?

5 A. Yes, I can. The information that was provided in
6 September of 2022 was following her arrest by the Erath
7 County Sheriff's Office and the Stephenville Police
8 Department. She was stopped on a traffic stop and found to
9 be in possession of a large amount of methamphetamine.

10 Later that next morning, we went and spoke to her,
11 trying to clarify specifically where the narcotics had come
12 from. We had been monitoring a phone ping and knew that she
13 had traveled to the area of Marcel Mallory's apartment.

14 We had become aware that Mr. Mallory had recently
15 changed apartments. So that was the reason we were speaking
16 to her.

17 Obviously, it was a post-arrest statement. She
18 waived her Miranda. She was still a little bit hesitant to
19 talk to us that day. I asked her specifically what the
20 largest transaction she had done with Mr. Mallory was. She
21 indicated 52 ounces, and that the methamphetamine had gone
22 to Brad Roberts, that Brad had a customer.

23 Later, on multiple occasions --

24 Q. Well, as part of that post-arrest statement, did
25 she say that she was essentially middling a deal for

1 52 ounces, and then got four herself from Mallory?

2 A. I don't know that she said that the first time.

3 Q. Okay.

4 A. Obviously, I was unaware of these objections, but
5 she said that the largest transaction she had done was
6 52 ounces. I believe that's how she stated it.

7 Again, after she was brought into federal custody,
8 more thorough interviews were done with her, where she
9 indicated that there were multiple occasions, I believe at
10 least four, where she traveled to Fort Worth and picked up
11 56-ounce quantities.

12 Basically, she took the money that was provided to
13 her by Brad Roberts and his customer, took that to
14 Mr. Mallory. And based on that amount of money, she was
15 able to get the 52 that the customer wanted, on top of that,
16 because of the price break, she was able to get four
17 additional ounces for herself. So she would keep four and
18 move the 52 to Brad and to his customer.

19 That information has been corroborated by proffer
20 interviews with Brad Roberts where he has identified the
21 customer who was receiving those quantities. He
22 corroborates multiple 52-ounce transactions that came from
23 Heather, which came from Marcel to his customer.

24 Q. And on the day of her arrest back in
25 September 2022 --

1 Is that right, that was approximately the date of
2 her arrest?

3 A. Yes.

4 Q. How much methamphetamine did she have with her
5 that day?

6 A. She had -- it was over 100 grams. I don't
7 specifically remember how much, but she had over 100 grams
8 of methamphetamine in a lockbox in her vehicle.

9 Q. So around four ounces?

10 A. Yes.

11 Q. Okay. So that tended also to corroborate kind of
12 her version of events as it relates to Mr. Mallory?

13 A. Yes.

14 Q. And Miss Thompson has been a credible and reliable
15 source of information; is that right?

16 A. Yes. We have interviewed her several times since
17 she has been in custody, and I would deem her reliable and
18 credible.

19 MR. SMITH: Okay. No more questions, your Honor.

20 CROSS-EXAMINATION

21 BY MR. TERRY:

22 Q. Agent Finney, once you met with Miss Roberts [sic]
23 the first time, she was placed into custody, read her
24 rights, and she gave a statement, correct?

25 A. I just want to clarify, not Mrs. Roberts. It's

1 Mrs. Thompson.

2 Q. Miss Thompson. Heather Thompson.

3 A. That's okay.

4 Q. Thank you.

5 A. She was arrested in September, very late on the
6 13th, or early on the 14th, I believe. We talked to her
7 that night, went back the following morning and spoke to
8 her, and she made a statement both times.

9 Q. And she indicated she had never purchased any more
10 than 52 ounces from Marcel Mallory; is that correct?

11 A. On that occasion, she said --

12 Q. It's a yes or no?

13 A. Well, I didn't ask the question like that.

14 Q. I'm asking you the question.

15 A. Will you ask it again, please?

16 Q. Yes.

17 On that date did Miss Mallory -- I'm sorry,
18 Mrs. Thompson indicate that she had never purchased any more
19 than 52 ounces from Marcel Mallory?

20 A. Yes.

21 Q. Later she is placed into federal custody at some
22 point, correct?

23 A. Correct.

24 Q. Okay. And you had the occasion then at that point
25 to meet with her, you personally, correct?

1 A. Yes.

2 Q. Okay. And did she agree to a proffer statement?

3 A. Yes.

4 Q. And the nature of her proffer statement is, if you
5 give truthful, credible, actionable testimony, then you get
6 a deal, correct?

7 A. No. So the answer to your question is no.

8 Can I expound upon that?

9 Q. Yes.

10 A. The purpose of a proffer statement is to provide
11 information in a manner that will not incriminate yourself,
12 in a way that we can, as investigators, attempt to take that
13 information and further our investigations.

14 Q. Okay. And usually that results, if the
15 intelligence is actionable, credible, that will result in
16 a -- what we all know is a 5K1 departure motion, which is
17 filed by the United States Attorney's office which affects
18 the defendant's sentencing, correct?

19 A. There are multiple questions in there.

20 Q. Does a proffered statement, if it's truthful and
21 credible, usually result in a downward departure, or less of
22 a sentence for a defendant, if it's credible?

23 A. No, it does not usually mean that. No, it does
24 not.

25 Q. Okay. So --

1 A. Listen, a defendant can receive a reduction based
2 on a proffer, but we want to be very specific here. So it
3 does not usually do that.

4 Q. Okay.

5 A. Occasionally. I would say that there are many
6 defendants in this hearing now that have given proffer
7 statements that are not receiving a 5K. So I can't say
8 usually it does.

9 Q. Well, one would usually in a situation, would you
10 think, if it's fair, that they would hope to get a reduction
11 in their sentence by helping the federal government?

12 A. Absolutely.

13 Q. Okay. And therefore, they would be a bit more apt
14 to embellish or to lay out a bigger case than sometimes
15 doesn't exist?

16 A. That does happen. But it's our job as
17 investigators to take the information and look at all the
18 evidence that we have, whether that be phone analysis, phone
19 dumps from people's cell phones, information we receive from
20 other defendants, we are then to decipher if the information
21 being told to us is true and accurate and correct.

22 Q. But in this case, Mr. Mallory's case, we have a
23 statement from Heather Thompson indicating not more than
24 52 ounces. She is then later placed into custody, federal
25 custody, under a proffer agreement, and then magically, she

1 comes up with numerous occasions she meets with Mr. Mallory
2 and places a lot more of what we all, sort of a misnomer,
3 but we all say ghost dope appears on his PSR, is that kind
4 of what happened here?

5 A. She was interviewed following her arrest in Erath
6 County and made a statement. I believe a lot of the
7 information she told us that day has proven to be true and
8 credible based on the fact that we were able to locate
9 Mr. Mallory's new apartment and get him into custody.

10 Q. Okay. And you say "a lot of that information" she
11 provided turned out to be correct.

12 What information did she provide that turned out
13 to be not correct?

14 A. I would say none. But what I was saying is there
15 was some information that was provided that we haven't
16 proven either way. I'm just saying, a lot of what she has
17 told us, we have been able to prove to be correct.

18 Q. Is it possible that any amount over the 52 ounces
19 could be in that category of not having proved it either
20 way?

21 A. No. Based on the fact that we have interviewed
22 and corroborated that information with the other individual
23 involved in these transactions, Brad Roberts.

24 Q. And has Brad Roberts agreed to proffer and
25 receive --

1 Well, has he agreed to truthfully, accurately
2 provide information to the federal government so that you
3 can further your investigation?

4 A. Mr. Roberts has signed a proffer agreement and has
5 participated in multiple proffer interviews, yes.

6 Q. With hopes of a downward departure or a reduction
7 in sentence?

8 A. Yes. Absolutely.

9 Q. Absolutely.

10 MR. TERRY: Pass the witness, your Honor.

11 THE COURT: Anything else?

12 MR. SMITH: No, your Honor.

13 THE COURT: Okay. You may step down.

14 AGENT FINNEY: Thank you, Judge.

15 MR. SMITH: May I just have a minute, your Honor?

16 THE COURT: Yes.

17 (An off-the-record discussion was had between the
18 attorneys.)

19 MR. TERRY: Your Honor, may I approach?

20 (An off-the-record sidebar was had.)

21 THE COURT: Okay. Do you have any witnesses you
22 would like to call, Mr. Terry?

23 MR. TERRY: Judge, may I have one second? I would
24 like to speak to my client.

25 THE COURT: Yes.

1 (An off-the-record discussion was had between the
2 defendant and his attorney.)

3 MR. TERRY: Your Honor, my client has indicated he
4 wants to testify against counsel's advice. So I guess would
5 the Court place him under oath?

6 THE COURT: Okay. Yes.

7 Would you raise your hand to be sworn, please?

8 (The defendant was sworn in.)

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Very good.

11 DIRECT EXAMINATION

12 BY MR. TERRY:

13 Q. Mr. Mallory, you've obviously been present in
14 court and overheard the discussion, the questions with Agent
15 Brian Finney, who's present, sitting right in front of you,
16 you indicated that a statement made by -- any statement made
17 by Heather Thompson, other than the 52 ounces, would be a
18 lie; is that correct?

19 A. Repeat the question, please.

20 Q. Sure.

21 You sold 52 ounces of methamphetamine to Heather
22 Thompson?

23 A. Yes, on one occasion. One time.

24 Q. Okay. Did you ever, on any occasion, have drug
25 interactions with Heather Thompson?

1 A. Yes.

2 Q. And what would those be and to what amounts?

3 A. They were smaller amounts. A lot smaller amounts,
4 like two to four-ounce amounts. You know, like smaller
5 amounts.

6 Q. What is the total amount that you delivered to
7 Heather Thompson?

8 A. I met with her approximately maybe 15 times total,
9 where in this particular -- in that report she said that I
10 met with her, like, 80 times over a 10-month period, which
11 is completely ridiculous.

12 I only met up with her 15 times. And they were
13 small quantities of maybe two to four ounces. And there was
14 that one time for 52 ounces. And that's why in the PSR,
15 when it said it was four times, 56 ounces, and then Bradley
16 Roberts took 52 ounces each time.

17 That doesn't even make any sense, because it's
18 such an uneven amount. Nobody would do 52 ounces four
19 times, because nobody sells -- nobody would sell it like
20 that. It's just not -- it wouldn't happen like that. It
21 was just a one-time thing. It was just a one-time
22 transaction.

23 They're trying to turn it into four transactions
24 for 56 ounces, which that's 6,000-something grams compared
25 to 1,400-something grams that I actually -- I only sold her

1 1,460 grams, not 6,500 grams, and that makes a huge
2 difference.

3 Q. So again, we need a number. What was the number
4 you just indicated?

5 Guidelines are based on your offense level as we
6 discussed --

7 A. Yeah. So --

8 Q. -- ad nauseam?

9 A. -- what I'm saying is, if they ruled in my favor
10 on this, then it would drop six kilos off of the 10 kilos
11 that she's putting on me, you know. And that's what I'm
12 saying. This is only happened one time for 52 ounces. It
13 did not happen four times for 56 ounces.

14 You know, that's a huge difference. It drops six
15 kilos off of the weight of the ghost dope that she's putting
16 on me for something that never happened. It never happened.

17 Q. So you believe your offense level should be
18 calculated using four kilograms of methamphetamine?

19 Help me understand that.

20 A. Where did you get four kilograms from?

21 Q. I'm asking you what should be --

22 THE COURT: It should be reduced by six kilos.

23 THE DEFENDANT: Reduced by six.

24 BY MR. TERRY

25 Q. Reduced by six?

1 A. Because if, in fact, the Judge rules in my favor,
2 then you have to subtract. Okay. What it comes out to is
3 4,900. You have to subtract 4,900 grams.

4 Okay. And then in controlled drug weight, that
5 would be, you double that, and that would come off the 10
6 kilos that she's saying that I sold her.

7 So, I mean, it would take almost six kilos off of
8 the 10 kilos that I sold her if he ruled in my favor on
9 this. That's what I'm saying. I only sold her 52 ounces
10 one time.

11 BY MR. TERRY:

12 Q. Okay.

13 A. I did not sell her 56 ounces four times. That
14 never happened.

15 MR. TERRY: Okay. I pass the witness, your Honor.

16 THE COURT: Mr. Smith, any questions?

17 CROSS-EXAMINATION

18 BY MR. SMITH:

19 Q. So Miss Thompson was arrested in September of
20 2022, when did you first start dealing with her?

21 A. I'd say around January of -- January of '22. I
22 only messed with drugs for 10 months, in a ten-month period,
23 from January to October.

24 Q. All right. And so, during that time frame, you
25 said. So for that 10-month time frame, you had a drug

1 relationship with Ms. Thompson; is that right?

2 A. Yes, sir.

3 Q. And you gave drugs to her, and she paid you money?

4 A. Yes, sir.

5 Q. And did you front her, or was it cash and carry?

6 A. She always had cash.

7 Q. All right. Did you ever front her any drugs?

8 A. No.

9 Q. All right. So what was the most you ever gave
10 her, besides that 52 ounces, do you think? Do you recall?

11 A. I can't really rightly recall, but I think the
12 most I ever gave her was a quarter pound, which is four
13 ounces. They were always two to four ounces. And like I
14 said, the 52-ounce transaction only happened one time. It
15 was just a one-time thing.

16 Q. Okay. So were you suspicious of that deal when a
17 person who normally gets a quarter pound from you asks for
18 that much?

19 A. No. I wasn't suspicious of it, no.

20 Q. So you filled it without any problem, without any
21 hesitation?

22 A. I don't know about any hesitation. I mean, I
23 worry about a lot of things, but I mean I decided to go
24 through with it, but I only did it one time. It never
25 happened four times.

1 Q. All right. So you had that 52 ounces on hand; is
2 that right?

3 A. Sir?

4 Q. You had that 52 ounces on hand?

5 A. Actually, I had to go get it. I didn't usually
6 have that amount, but I had to go get it.

7 Q. And who were you getting it from?

8 A. I'm not willing to disclose that at this time.

9 Q. So you don't have a name?

10 A. No.

11 Q. You do have a name?

12 A. My name?

13 Q. No. You know who you are getting these 52 ounces
14 from?

15 A. Yes.

16 Q. But you're not going to tell us?

17 A. No.

18 Q. Why aren't you telling us?

19 A. Because I believe in, you know, I got caught and I
20 need to pay for my own mistakes. I'm not going to make
21 somebody else pay for my mistakes.

22 Q. Well, you are under oath, right?

23 A. Yes, sir.

24 Q. And you understand that?

25 A. Yes.

1 Q. And you are not going to tell us who you got your
2 drugs from?

3 A. No.

4 Q. All right. How many different people did you get
5 drugs from?

6 A. Just one person.

7 Q. So you had one source that entire 10-month time?

8 A. Yes.

9 Q. And you got drugs from that person every time?

10 A. Yes.

11 Q. And what kind of quantities were you getting from
12 that person?

13 A. Well, the first few months, when I started messing
14 with it, I was only getting like a quarter pound, four-ounce
15 quantities. Like, I was getting -- I would get, like, eight
16 ounces, like, a month. Eight-ounces a month starting off.
17 It was just a quarter pound every two weeks.

18 Q. And so, those quarter pounds went all to
19 Miss Thompson?

20 A. No. I sold smaller stuff to other people. Like
21 really small amounts to other people.

22 Q. So you had other drug customers?

23 A. Yes.

24 Q. Like who?

25 A. I don't know -- I don't know the names. I'm not

1 going to give any names like that. I'm not going to do
2 that.

3 Q. So you are refusing --

4 A. The issue here is the transaction that we are
5 talking about, the four transactions.

6 Q. The issue here --

7 THE COURT: Hold on. Hold on. Just answer the
8 question, please.

9 THE DEFENDANT: Okay. I'm sorry.

10 BY MR. SMITH:

11 Q. The issue now is you telling the truth and it
12 seems like you're not.

13 So who were your other drug customers?

14 A. I'm not at liberty to discuss that. I'm not going
15 to include anybody else.

16 Q. So you know the names, but you're not telling us;
17 is that right?

18 Yes or no?

19 A. Yes.

20 MR. SMITH: All right. I have no further
21 questions, your Honor.

22 THE COURT: Okay. Any other witnesses?

23 MR. TERRY: I have no further questions.

24 THE COURT: Okay. Very good.

25 After hearing the testimony, I find Agent Brian

1 Finney's testimony credible. He and his colleagues have
2 corroborated, as he characterizes it, a lot of what this
3 informant has to say and has provided.

4 He also testified that it is his job and his
5 colleagues' job to include a screening or skeptical
6 evaluation of information provided to him, screening or
7 evaluating for any improper motives. That's why it sounds
8 like he and his colleagues worked to corroborate this
9 information.

10 I also find that the defendant, of course, has a
11 motive to say these things. He's looking at a heavy
12 sentence. And it also is significant to me that he is
13 withholding information that is relevant to this hearing at
14 this hearing today, while under oath.

15 And so, on balance, after considering all of this
16 information, I find that the information contained in the
17 PSR is true and correct and reliable and should be
18 considered by me.

19 I also find that the defendant has falsely
20 provided false statements to these objections. So I find
21 that he should not be entitled to acceptance of
22 responsibility.

23 I therefore determine that his total offense level
24 is 42; his Criminal History Category is IV; his guideline
25 imprisonment range is between 360 to 480 months; his fine

1 range is between \$50,000 and \$5 million.

2 Does the government wish to be heard on
3 sentencing?

4 MR. SMITH: Your Honor, the government would just
5 point out that, based on the Court's finding, an adjustment
6 for obstruction of justice would also be appropriate.

7 I'm not sure that it makes a big difference on the
8 guidelines, but in any event, the government would ask the
9 Court to consider that.

10 THE COURT: Okay. All right. I agree,
11 obstruction applies as well. So his guideline range would
12 be, the total offense level would be 44, but his guideline
13 range would be life, but he's capped at 480 months under the
14 plea agreement, which I accept. So thank you. Yes?

15 MR. SMITH: Yes, your Honor. So with that being
16 said, the government would urge a guideline sentence.

17 THE COURT: Yes. Thank you.

18 Mr. Terry, I will turn the floor over to you.

19 MR. TERRY: Very briefly, your Honor. We would
20 request a below-the-guideline sentence of 240 months.

21 I understand that Mr. Mallory has made some
22 statements today. I think they came in a very late hour
23 and, unfortunately, was influenced by an individual that
24 he's had contact with in the past 24 to 48 hours. I
25 understand that he's nervous, he's upset, he was onboard

1 with this sentencing and his conduct.

2 I think things have went off the rail a little
3 bit. We would ask the Court to consider not applying the
4 obstruction of justice just for -- just for the prima facie
5 look at things. He is adamant in his objection.

6 We do have an ancillary, a secondary hearing after
7 this. So we'd ask the Court to consider 240 months, as
8 opposed to the 360 to life or 480 months.

9 THE COURT: Very good. Thank you.

10 Mr. Mallory, do you wish to speak on your behalf?

11 Your counsel has provided to me a sentencing
12 memorandum immediately prior to this hearing, which I've
13 been able to skim through in advance of the hearing.

14 And so, I realize that, as your memorandum has
15 indicated, that you witnessed abuse in the past, that you've
16 had addiction issues, and you've made some requests in here
17 as well. So I've reviewed that.

18 With that said, sir, do you wish to make any other
19 statement --

20 THE DEFENDANT: Yes. I wish to apologize to the
21 Court for any misunderstanding. I'm not a bad guy. I'm not
22 a big-time drug dealer. I had a drug problem.

23 When I got out in April of '21, I got a good job
24 as a forklift driver. I lost my job because of an accident
25 I had on the job. And after that, everything kind of went

1 downhill.

2 I couldn't find a job. I couldn't find a job, you
3 know, because of background checks. I had a lot of problems
4 finding a job. And that's what drove me to start selling
5 drugs again and supporting my habit.

6 I just want to say I'm not a big-time drug dealer.
7 I just support my habit. I didn't have a bunch of money.
8 You know what I'm saying? I was only involved with it for a
9 10-month period.

10 And like I said, I wanted to work. I wanted to
11 work, but I just couldn't find a job. And then that just
12 led me to go back doing what I did before, but I just needed
13 some help.

14 And that's all I have to say. I just ask that
15 God's will be done, and I apologize to the Court. That's
16 it.

17 THE COURT: Okay. Thank you, sir.

18 I will now state the sentence determined pursuant
19 to Title 18 U.S.C., Section 3553. As I mentioned, I have
20 accepted the plea agreement.

21 It will be the judgment of the Court that the
22 defendant is committed to the custody of the Federal Bureau
23 of Prisons for a period of 480 months.

24 This sentence shall run consecutive to any future
25 sentence which may be imposed in Case No. 4:18-cr-54.

1 I do not order a fine.

2 I do order the mandatory special assessment of
3 \$100.

4 I also order that, upon your release, you be
5 placed on supervised release for a term of five years.

6 While on release, you shall comply with the terms
7 of supervision set forth in Miscellaneous Order No. 64 and
8 as outlined in Part G of the presentence report.

9 Is there any objection from the government to this
10 sentence?

11 MR. SMITH: No, your Honor.

12 THE COURT: From the defendant?

13 MR. TERRY: Object to the reasonableness, your
14 Honor.

15 THE COURT: Okay. I will overrule that. I
16 believe that, given the facts and circumstances of this
17 case, the defendant's circumstances, his Criminal History
18 Category of IV, his prior convictions, which include a
19 number of offenses that received zero criminal history
20 points, he also received, in addition to the zero criminal
21 history points, there are five prior arrests where he pled
22 guilty to the arrest, but further prosecution was barred
23 known as a plea and bar.

24 After considering all of the defendant's
25 background, including the facts and circumstances of this

1 case, and balancing those with the information contained in
2 the sentencing memorandum, as well as his testimony here
3 today, and the obstruction that I found occurred, this is
4 the sentence that I believe is appropriate.

5 This is the sentence that provides for just
6 punishment, affords adequate deterrence, and will protect
7 the public from further crimes of the defendant.

8 And so, therefore, I determine that this sentence
9 is sufficient but not greater than necessary to comply with
10 the statutory purposes of sentencing.

11 Now, you have the right to appeal this sentence.
12 You also have the right to apply for leave to appeal in
13 forma pauperis, if you are unable to pay the cost of an
14 appeal.

15 And if you decide to appeal, your notice must be
16 filed within 14 days. Please talk to your counsel on how
17 you wish to proceed in that regard.

18 Please follow your client's instructions on that
19 issue.

20 MR. TERRY: Yes, Judge.

21 THE COURT: So we are in recess on this case.

22 MR. SMITH: Your Honor, if I may?

23 THE COURT: Yes.

24 MR. SMITH: The government moves to dismiss the
25 indictment filed on November 9, 2022, as to this defendant

1 only.

2 THE COURT: Okay. That will be granted.

3 (The proceedings concluded at 9:55 a.m.)

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REPORTER'S CERTIFICATE

I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter to the best of my ability to hear.

Further, due to the COVID-19 pandemic, some participants are wearing masks, and/or appeared via videoconferencing, so proceedings were transcribed to the best of my ability.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 23rd day of May, 2023.

_____/s/ Zoie Williams_____
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1 1,400-something [1] 19/25 1,460 grams [1] 20/1 10 [4] 20/10 21/5 21/8 21/22 10-month [4] 19/10 21/25 24/7 29/9 10-point-something [1] 7/15 100 [2] 12/6 12/7 10th [2] 2/3 33/20		9 9-14-22 [1] 6/20 9:18 [1] 1/9 9:55 a.m [1] 32/3

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